No. 04-959

Supreme Court, U.S.
FILED
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In The Supreme Court of the United States

BONNIE HARBUCK,

Petitioner,

v.

UNITED STATES,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITION FOR REHEARING

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QUESTIONS PRESENTED

1. Whether 28 U.S.C. § 1500, as originally drafted in the 1800's, is unconstitutional?

RULE 29.6 STATEMENT AND INTERESTED PERSONS

Pursuant to Supreme Court Rule 29.6, petitioner states that it has no parent companies or non-wholly owned subsidiaries.

The following persons have an interest in the outcome of this litigation:

Bonnie Harbuck, United States.

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RULE:

Sup. Ct. R. 44 1

PETITION FOR A REHEARING

JURISDICTION

The court of appeals' judgment was decided on August 10, 2004. A timely request for a combined petition for rehearing and petition for rehearing en banc was denied on October 15, 2004. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1). A petition for certiorari was denied on February 22, 2005. Pursuant to Supreme Court Rule 44, petitioner requests a rehearing.

STATUTORY PROVISION INVOLVED

28 U.S.C. § 1500 provides: "The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States."

REASONS FOR GRANTING THE REHEARING

28 U.S.C. § 1500 is unconstitutional. It was unconstitutional back in the 1800's when the statute was enacted. The statute was drafted to avoid duplicitous litigation after the civil war with the cotton claimants who lost their cotton. The Southerners would sue in a variety of courts under differing theories of law for redress for the loss of their cotton

crops. So, in the 1800's Congress passed §1500 legislation to end these lawsuits. Yet the law was unconstitutional. 28 U.S.C. § 1500 as written has always been unconstitutional.

The statute is unconstitutionally vague and ambiguous. The statute has no procedural safeguards to protect against some suits against the government that are similar but are not really the same. The statute does not address special provisions for differing remedies. The statute does not address cases that are transferred. A host of problems are not specifically addressed in this statute, thereby making the statute unnecessarily vague and ambiguous. The statute as written is unconstitutional.

In the 1800's it was unconstitutional to broadly take away rights to the cotton claimants when no such other law took away the rights for more than one suit at a time for other claimants. A person could sue a private individual in a variety of courts, and there was no law prohibiting those types of duplicitous suits. Merely, suits against the government in multiple forums were prohibited.

Cases against private individuals that are the same cases are not protected under this legislation. A Southerner could sue another Southerner for a loss that occurred during the 1800's in two different forums at the same time and yet § 1500 does not protect him. That was unconstitutional. The statute is still unconstitutional today.

The statute is unconstitutional, and it has been for well over 100 years. Isn't it time to address that fact now? 28 U.S.C. § 1500 is unconstitutional.

CONCLUSION

The petition for rehearing should be granted. 28 U.S.C. § 1500 is an antiquated statute from the civil war that has always been unconstitutional.

Respectfully submitted,

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